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ENVIRONMENTAL ASSESSMENT BOARD



ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARINGS

VOLUME: 81

DATE: Wednesday, November 13, 1991

BEFORE:

HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

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ENVIRONMENTAL ASSESSMENT BOARD
ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

IN THE MATTER OF the Environmental Assessment Act,
R.S.O. 1980, c. 140, as amended, and Regulations
thereunder;

AND IN THE MATTER OF an undertaking by Ontario Hydro
consisting of a program in respect of activities
associated with meeting future electricity
requirements in Ontario.

Held on the 5th Floor, 2200
Yonge Street, Toronto, Ontario,
on Wednesday, the 13th day of November,
1991, commencing at 10:00 a.m.

VOLUME 81

B E F O R E :

THE HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

S T A F F :

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MS. C. MARTIN	Administrative Coordinator
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SCOPING SESSION

Reply by Mr. B. Campbell

14422

DECISION

14442

L I S T o f E X H I B I T S

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360	Statement submitted by Ontario Hydro titled: Hydroelectric approvals.	14431
361	Letter dated November 1, 1991 from Steve Fobister, Grand Chief, Grand Council Treaty No. 3 to Justice Saunders, Chairman of the Environmental Assessment Panel.	14449

TIME NOTATIONS

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10:13 a.m. -----	14426
10:25 a.m. -----	14433
10:40 a.m. -----	14441
Recess 10:41 a.m. -----	14442
12:40 p.m. -----	14449
Luncheon 12:50 p.m. -----	14456
Adjournment 2:45 p.m. -----	14458

1 ---Upon commencing at 10:02 a.m.

2 THE REGISTRAR: Please come to order.

3 This hearing is now in session. Be seated, please.

4 THE CHAIRMAN: Mr. Campbell?

5 MR. B. CAMPBELL: Thank you, Mr.

6 Chairman.

7 REPLY BY MR. B. CAMPBELL:

8 Thank you for the opportunity to consider
9 this overnight. It has been possible for me to, I
10 think, reduce my submissions to being very brief this
11 morning, and I think that will be for the benefit of
12 all concerned.

13 There are two specific matters which I
14 wish to address before turning specifically to the
15 question of approvals; they have to do with submissions
16 first by Mr. Shepherd and then by Mr. Moran.

17 Mr. Shepherd at what is page 14356 of
18 the transcript appears to take the position that
19 Hydro --

20 THE CHAIRMAN: Hold it. It helps if we
21 have the page. 14356?

22 MR. B. CAMPBELL: 14356, Mr. Chairman.

23 I am looking at the paragraph that starts
24 about line 14. Mr. Shepherd takes the position there
25 that Hydro cannot obtain an approval for a range of

1 megawatts because Hydro never asked for that and
2 therefore there is a notice problem.

3 In our submission, that position is
4 simply wrong. It inaccurately states the situation.
5 The approvals requested by Ontario Hydro originally
6 were for both megawatts and sites, that is megawatts of
7 hydraulic capacity and sites associated with that.

8 It is clear that the Board's ruling
9 denies the opportunity to go for site-related matters
10 in the approval, but the notice always contemplated
11 approval of an amount of capacity. And with respect to
12 the amount of capacity or the megawatt side of the
13 approvals, the situation is now no different than
14 before in any sense of Mr. Shepherd's argument.

15 We say there is no general notice problem
16 of the type raised in Mr. Shepherd's submissions. In
17 saying that, we do not resile from our concern about
18 the difference between the different communities
19 affected named on the notice. That is a separate
20 issue. So, I don't want to be taken by my friends who
21 are concerned about that issue as changing our view on
22 that.

23 I simply say there is no general notice
24 problem of the type raised by Mr. Shepherd because the
25 notice is clear and Chapter 19 is clear.

1 ---Off the record.

2 MR. B. CAMPBELL: Because the notice is
3 clear and Chapter 19 is clear, that what was
4 contemplated was approval of an amount of hydraulic
5 capacity.

6 Now, the second matter I wanted to deal
7 with, just briefly, and it is simply to correct a
8 factual matter.

9 THE CHAIRMAN: Just a moment. The notice
10 problem so-called in your view is not a problem for
11 this hearing but rather for site-specific hearings; is
12 that correct?

13 MR. B. CAMPBELL: It is a problem in the
14 sense of: Can this Board make a decision that is
15 determinative of issues which parties may wish to raise
16 in hydraulic applications relating to projects that are
17 not identified on the notice.

18 THE CHAIRMAN: At this hearing or at
19 site-specific hearings?

20 MR. B. CAMPBELL: Well, I guess it's
21 really both in the sense that if a person is
22 potentially affected - let's take the Patten Post
23 project as an example - potentially affected by the
24 Patten Post project, I think the argument goes for my
25 friends that they would have looked at the notice, they

1 would have looked at Chapter 19, they would have
2 concluded that no approval was requested that affected
3 Patten Post, and therefore they did not participate in
4 this hearing on whatever broad range of issues this
5 Board is considering.

6 I think the argument then is that if they
7 are entitled to look at those issues, if a Patten Post
8 application goes forward, the position would be that
9 their look at those issues is not constrained by
10 anything that this Board does. I think that's the
11 nature of the argument. It's certainly my
12 understanding of Mr. Estrin's argument and, as I say, I
13 think it's consistent with the preliminary view that we
14 have taken of the potential for notice problems.

15 Obviously, the corollary of that is that
16 for the sites named, that problem does not exist.

17 MS. PATTERSON: Just taking that a little
18 bit further, Mr. Campbell, if we agreed that the sites
19 that weren't named would have individual hearings, it
20 wouldn't be considered in terms of the need question at
21 this hearing. If Patten Post were approved for the
22 number of megawatts sought there, would those megawatts
23 be subtracted from a total attainable potential that
24 this Board might approve? In your own planning
25 process, say, a range of 1,400 to 1,800 megawatts were

1 approved here, Patten Post was approved for 200
2 sometime in your planning period, what happens to those
3 200 megawatts?

4 MR. B. CAMPBELL: I think our position is
5 that they would use up, if you will, part of the 1,800.
6 But I think I have to add to that, that when that
7 application goes forward we cannot use that approval as
8 justifying the requirement and rationale for Patten
9 Post. We would have to deal with that issue on its own
10 merits in that proceeding.

11 Ms. Patterson, I guess just to add,
12 that's really why in putting forward the letter on
13 scoping we pointed out that there may be a difference
14 between the amount that's reasonable to rely on for
15 planning purposes and the formally approved amount, and
16 that that deduction from Patten Post would be made from
17 1,400 to 1,800, and moving from the planning purpose
18 amount to the formal legally approved amount. It was
19 exactly that reasoning that when we made that
20 translation we said that was what we saw as something
21 that was a result of the notice concern.

22 Now, if I can turn to the second point I
23 wanted to deal with, which I can deal with briefly.

24 [10:13 a.m.]

25 Mr. Moran's submissions to you on the basis of the

1 judicial review conducted of the First Southwestern
2 Ontario Plan Stage Hearing were premised on that
3 situation not being analogous in any way to what we are
4 facing today, and while it may come oddly from my mouth
5 to say that it is analogous, I think it is only fair to
6 say that, having been involved in that case and on the
7 wrong side of it, that as a factual matter Mr. Moran's
8 premise is simply not correct.

9 The premise that he put to you was that
10 the various municipalities concerned in that judicial
11 review application had never received the original
12 notice. In fact, that is not correct; all of the
13 municipalities involved had received the original
14 notice. They took the position on the judicial review
15 that when they looked at that notice, given that it
16 said southwestern Ontario, they did not consider
17 themselves at risk because they took the position that
18 it was not reasonable for them to recognize that they
19 were in the geographic area which was referred to as
20 southwestern Ontario. And it is because of that
21 factual situation they didn't realize they were at
22 risk.

23 That was certainly a focus of the
24 rationale for Mr. Justice Reid's decision on this
25 matter and it is because of, as I say, the focus on

1 that rationale, the fact that they didn't realize they
2 were at risk, that raises a concern with us that the
3 situation here is analogous, that those people, for
4 instance, at Patten Post would have looked at the
5 notice and at the approvals and assumed from that that
6 they were not at risk in these proceedings.

7 And, in that regard, I guess I agree
8 entirely with my friend Mr. Allison who indicated that
9 the situation is really analogous to a litigation
10 situation, that there may well be lots of mention of a
11 particular factor in the pleadings or other documents
12 associated with the case, but it's the prayer for
13 relief that really matters, it's that which the
14 applicant is seeking that will draw the attention and
15 involvement of parties to that litigation. And that
16 general principle, I believe, is applicable here. I
17 concur with it entirely.

18 In turning to the third matter I want to
19 deal with, I think the easiest way to start is to
20 direct the Board to submissions from Mr. Kelsey. Mr.
21 Kelsey said at 14328 of the transcript, starting at the
22 bottom of that page and going on to -329, in response
23 to a question from the Chairman as to whether the Board
24 should be intruding into the site-specific
25 jurisdiction, Mr. Kelsey pointed out:

1 "No, it is not intruding into the
2 site specific. What it is doing is
3 clarifying the extent of your
4 jurisdiction here because otherwise if
5 you leave it to the site specific, then
6 the site specific would in effect be
7 determining what the extent of your
8 jurisdiction was."

9 He goes on to say that he thinks it's
10 your obligation at this stage to refine the limit of
11 your decision and say to what extent there's a notice
12 problem, et cetera.

13 Now, I guess that's basically consistent
14 with the views that we have taken on the matter, that
15 it is important to the parties and in particular, of
16 course, my concern is that it's important to Ontario
17 Hydro, both for purposes of its conduct of this case
18 and for purposes of making decisions generally with
19 respect to the conduct of its business, that it have a
20 clear statement as to the hydroelectric approvals as
21 they are modified by the Board's ruling.

22 And in order to take what I fully admit
23 is a somewhat confusing transcript of yesterday from
24 time to time and reduce it to what I hope is a clear
25 and explicit statement of that, I have prepared and

1 distributed to my friends just prior to the hearing
2 this morning - and I have left copies with your clerk
3 and have asked them to be distributed to you now - a
4 short statement of what Ontario Hydro at least sees as
5 being the hydroelectric approvals that are open to it
6 now, and there's sufficient commentary on that to
7 demonstrate the assumptions that Hydro is making, not
8 just for the purposes of this hearing, but also in
9 conducting its business. And this matter is extremely
10 pertinent to certain aspects of the matters that are
11 under active consideration at Hydro at the moment.

12 THE CHAIRMAN: Can we just take a moment
13 to read it.

14 MR. B. CAMPBELL: Yes, Mr. Chairman.

15 THE CHAIRMAN: I take it that language
16 tracks the letter of November 7th without variation; is
17 that correct?

18 MR. B. CAMPBELL: There are minor
19 editorial changes. We've taken out the reference to
20 Abitibi complex because we just wanted a clean, simple,
21 uncomplicated statement but, yes, it tracks that
22 language very closely.

23 I would ask that this be made an exhibit
24 because, if this is seen as a reasonable statement at
25 this point, it is something that it is going to be the

1 basis of Hydro's planning, as I say, both for purposes
2 of conducting this case and for moving forward on
3 matters of importance to it in other areas.

4 THE REGISTRAR: Mr. Chairman, 359 having
5 been prefiled, this exhibit number will be 360.

6 THE CHAIRMAN: 360, thank you.

7 ---EXHIBIT NO. 360: Statement submitted by Ontario
8 Hydro titled: Hydroelectric
approvals.

9 MR. B. CAMPBELL: Now, the first
10 statement in it, Mr. Chairman:

11 "Hydroelectric Approvals

12 The approval would be for the
13 requirement and rationale for a specified
14 range of hydroelectric capacity and
15 energy."

16 That proposition is the one you agreed
17 with toward the end of yesterday, that that was an
18 accurate statement of what the approval would
19 encompass.

20 What we go on to say is that:

21 "The implications of such an approval
22 would be that in putting forward project
23 applications for the Little Jackfish,
24 Niagara, Mattagami developments, Hydro
25 has

1 established that there is a requirement
2 and rationale for adding hydraulic
3 generation to the system and that
4 vis-a-vis other demand and supply options
5 hydroelectric generation is an
6 appropriate way to meet the demand for
7 electricity at least to the extent of the
8 approved range."

9 And I mean at least in a limiting sense.

10 Now, the only purpose for naming the
11 applications there is, first, that as a practical
12 matter those are filed and we need to know how to deal
13 with them; secondly, that it recognizes the concern
14 about notice with respect to going beyond those
15 applications.

16 I simply want to point out, as I say,
17 that in putting forward those particular ones, the two
18 points, that would be taken as having been established
19 here. I think it's equally important, however, to add
20 what we have beneath that, which is the following:

21 "However, the issue of why a
22 particular development should be approved
23 in lieu of other hydroelectric
24 developments is a matter for the project
25 applications."

1 That is, the choice of site for approval
2 is not one that would be determined in any respect
3 here.

4 [10:25 a.m.]

5 In bringing this forward, Mr. Chairman, I
6 think it is -- what we have tried to do was simply
7 condense the discussion in the letter down to its
8 essence and indicate that this is our understanding of
9 where we now stand following the Board's ruling, and if
10 we are wrong in that respect, there are a range of
11 reasons why we need to know that now.

12 I believe, and I submit to you, that
13 given all of yesterday's discussions, having considered
14 the Board's ruling, that this constitutes an accurate
15 statement of both the specifics of the Board's ruling,
16 its approval consequences, and an accurate guideline to
17 the parties and Ontario Hydro in proceeding from this
18 point forward.

19 THE CHAIRMAN: You made the remark that -
20 about the last phrase in the second bullet - the phrase
21 "at least to the extent of the approved range", that
22 that was limited. I am not sure I understood what you
23 meant by that.

24 MR. B. CAMPBELL: My friend Mr. Kelsey
25 was concerned that the words "at least" - and we talked

1 about this before we started today - that the words "at
2 least" had an implication that it could go higher, and
3 that is not what I meant. I meant at least in the
4 sense of a ceiling; that the approved range would
5 provide a ceiling.

6 MS. PATTERSON: So you should take out
7 "at least"?

8 MR. B. CAMPBELL: I am quite content to
9 take out "at least".

10 THE CHAIRMAN: And I take it that those
11 are the approvals you are asking for. It may not
12 necessarily be the approvals that you get; is that
13 understood?

14 MR. B. CAMPBELL: We understand fully
15 that the size of the range is a matter for evidence and
16 determination by this panel. What we understand this
17 to be is the approvals that are available to us as a
18 result of the Board's ruling. We had asked for
19 obviously something different; that has now been
20 constrained. And we understand this to be what is now
21 available to us as a result of the Board's ruling, if
22 the evidence supports findings to this effect.

23 We understand fully that there is a
24 matter of proof and evidence that has to be dealt with
25 to address these matters. We don't just get them

1 automatically, we have to show you why they make sense.
2 But if we meet that test then we understand that this
3 is what is available to Ontario Hydro.

4 DR. CONNELL: Just to follow up, Mr.
5 Campbell. It follows from what you have said that the
6 range will have an upper and lower bound. It is
7 possible that the lower bound could be zero; it is
8 possible that the upper bound could be zero.

9 MR. B. CAMPBELL: All matters determining
10 where the range lies between zero and 20,000 are
11 matters that you will have to reach conclusions on
12 based on all of the evidence in front of you. We will
13 take the position and we will hope to persuade you of
14 that position, but others will take different positions
15 and in the end you will have to fix a range which you
16 believe is appropriate based on your best judgment.

17 THE CHAIRMAN: How would your position
18 differ if the words in the second paragraph, "...for
19 the Little Jackfish, Niagara or Mattagami developments"
20 be deleted so that the approvals would read, "The
21 implications of such an approval would be that in
22 putting forward project applications Hydro has
23 established..." the following two things?

24 MR. B. CAMPBELL: I think it would not
25 materially affect our position on the matter except to

1 the extent that, for instance, Ms. Marlatt's client
2 might be concerned that that would be read as
3 encompassing Patten Post. And that's why we have tried
4 to limit it to the applications that are covered in the
5 notice and that are therefore not a concern with
6 respect to the technical notice problem that we spoke
7 of yesterday.

8 I should be clear, in putting those in we
9 take no implication of approval for those projects or
10 sites by putting those words in. It is just that the
11 notice considerations mean that these conclusions can
12 only be applied in certain applications. I want to be
13 clear, we take no implication from that, from putting
14 it that way, that stating it that way implies an
15 approval with respect to those particular sites. We
16 understand the force of the Board's ruling in that
17 respect.

18 DR. CONNELL: Further to that, Mr.
19 Campbell, do you believe that it would place upon us an
20 obligation to hear evidence from whatever point of view
21 in much more detail with respect to these three sites
22 than for any other sites?

23 MR. B. CAMPBELL: No.

24 THE CHAIRMAN: Would it not be open to
25 the representatives from those communities to argue

1 that these particular projects should be excluded from
2 planning considerations?

3 MR. B. CAMPBELL: I am assuming that we
4 have a series of exclusionary criteria, and I must say
5 that I find fairly persuasive the arguments that were
6 put to you yesterday, that if those communities can
7 show you that the group to which a specific
8 exclusionary criteria applied should include these
9 sites, then they ought to be excluded, but the focus is
10 on the criteria. And, for instance, say we discovered
11 that Little Jackfish was actually in a provincial park,
12 then I think it would be open for Ms. Omatsu to call
13 that fact to your attention and say Hydro has a parks
14 criteria so it should be excluded from that category.

15 I think you will also hear us say,
16 though, in the end that the range that we will be
17 asking for does not depend on the approval of these
18 three sites or any other sites. We believe we have
19 arrived at a reasonable range. You have heard us say
20 that these sites are on the first cut within that
21 range, but we understand and you will hear us say that
22 we think it's a reasonable range because even if these
23 sites are turned down, there are other steps that can
24 be taken or other places that can be looked at.

25 THE CHAIRMAN: Within the ambit of the

1 hydraulic plan?

2 MR. B. CAMPBELL: Yes, exactly.

3 And we understand that we can't get an
4 approval that carries us into those. We have never
5 taken any different position.

6 MS. PATTERSON: Do you mean by that you
7 couldn't get an approval during the seven years after
8 our decision for those sites because they weren't named
9 in the notice?

10 MR. B. CAMPBELL: No. I simply mean that
11 we couldn't get an approval from this panel. If, for
12 instance, and I will take an example, say we took
13 Niagara forward and Niagara was turned down, we might
14 well bring forward another application for another area
15 within a very quick time period, but we couldn't take
16 from this Board's approval, because again of the notice
17 concerns, any endorsement. Patten Post would be a
18 perfect example.

19 There are just some problems that we are
20 concerned that, because of the notice situation, that
21 can't be dealt with here.

22 THE CHAIRMAN: Are those your
23 submissions?

24 MR. B. CAMPBELL: Those are my
25 submissions. If there are no more questions, Mr.

1 Chairman, I would simply say that it is in my
2 submission, based on what I heard yesterday important
3 to the parties, to have an understanding as to whether
4 this is correct and it is certainly important to
5 Ontario Hydro, not just for purposes of this hearing,
6 but for the conduct of its business generally to
7 understand that the statement here accurately
8 represents the situation we find ourselves in now.

9 THE CHAIRMAN: All right. Now, it seems
10 to us that in order to proceed with the Panel 6 process
11 that the discussions of the last day and a bit raise
12 three questions which we ought to address and try and
13 give some direction on so that we can move along.

14 (1) The first one is the one that Mr.
15 Campbell has been discussing with us this morning, and
16 that is the nature and extent of the approvals
17 available to Ontario Hydro in light of the scoping
18 ruling on the 30th of October.

19 (2) The second is the extent that this panel
20 can exclude potential, technical hydraulic potential,
21 from the plan.

22 (3) The third issue is the implications that
23 arise from the circumstance that in assessing
24 potential, consideration will be given to locations for
25 which rationale approval was not sought in the

1 Demand/Supply Plan, so-called notice issue.

2 Those seem, to us, from yesterday's
3 hearing to be the three things that need to be
4 addressed.

5 If there is anyone here who thinks there
6 is anything more that should be addressed before they
7 proceed further, then perhaps this is the time for them
8 to say so.

9 Now, these are not easy questions, but
10 they obviously have some immediacy to them, so we are
11 going to adjourn right now to discuss them. It's going
12 to take at least until 11:30; I hope it won't take much
13 longer but it will take at least to 11:30. I think we
14 will have to ask you to stay with it because we can't
15 move any farther until we deal with these matters.

16 Mr. Moran?

17 I thought I gave ample opportunity to
18 everybody, so I hope that this is something very vital.

19 MR. MORAN: That's right.

20 I thought we could perhaps take advantage
21 of the recess. We never had an opportunity yesterday
22 to discuss exclusions on site-specific issues and maybe
23 if the parties were interested in having a bit of a
24 discussion, I was just going to suggest we could remain
25 here and have that while you are taking your break.

1 THE CHAIRMAN: That sounds like a good
2 idea. All right, we will adjourn now.

3 Mr. Taylor, were you on your feet?

4 MR. TAYLOR: Mr. Chairman, I apologize
5 for this, but can I just clarify one item.

6 I recognize that I wasn't here yesterday
7 and I apologize for that. Fortunately in that case the
8 Ontario Government has made an offer which may settle
9 that one. I wish the same might be forthcoming here
10 but I doubt it.

11 MR. B. CAMPBELL: So do I.

12 MR. TAYLOR: Is my understanding that
13 Exhibit 360 is Mr. Campbell's reply and we are not
14 going to be able to make submissions with regard to the
15 reply and the Board is going to consider everything it
16 has before it now? Is that my understanding of where
17 we are?

18 THE CHAIRMAN: Well, Mr. Campbell put it
19 in as reply, that's quite right, but the language is
20 almost identical to the language that was in the letter
21 of November 7th, that was the subject of discussion
22 yesterday.

23 [10:40 a.m.]

24 If that's the case, Mr. Chairman, then
25 I'm content - my client's submissions are on the

1 record - I'm content that those submissions go forward.
2 Obviously I had some concerns with what I saw in 360
3 and I would have addressed those, but I understand, in
4 terms of the process where we're at, and I'm content to
5 let the matter rest.

6 Thank you.

7 THE CHAIRMAN: Thank you, Mr. Taylor.

8 THE REGISTRAR: This hearing will recess
9 until 11:30.

10 ---Recess taken at 10:41 a.m.

11 ---On resuming at 12:25 p.m.

12 THE REGISTRAR: Please come to order.
13 The hearing is now in session. Be seated, please.

14 DECISION

15 THE CHAIRMAN: On October 30th last, this
16 panel made a decision with respect to the scoping of
17 the issues on Panel 6. In reply to that decision Hydro
18 wrote a letter dated November 7th, 1991, and for the
19 last day and a half we have been here discussing the
20 scoping of the issues on that panel.

21 Just before the adjournment, three
22 questions were identified as being necessary for
23 resolution prior to proceeding further. It is fair to
24 say, given the time that has been spent, not only
25 recently, but prior to this date on this issue, that

1 these are not easy questions. We have given them
2 careful consideration and we are now prepared to
3 attempt to provide some guidance to the parties. We
4 feel we should do so without delay so that parties will
5 not be delayed in their preparation for Panel 6.

6 We may feel it necessary to issue
7 supplementary or fuller reasons. Time just does not
8 permit an elaboration of all the background that leads
9 to the decisions that we have made.

10 (1) I will deal first with the question of
11 the extent of the exclusions from technical hydraulic
12 potential.

13 It is appropriate, in our view, for the
14 parties to call evidence of a generic nature relating
15 to hydraulic potential, and that would include the
16 proposition put forward by Mr. Olthuis, as I recall it,
17 that there are no generic characteristics of a Hydro
18 site.

19 Also it would be, in our view,
20 appropriate for parties to advance the proposition that
21 the process whereby Hydro reached its conclusions was a
22 flawed process and that other techniques should have
23 been used.

24 Furthermore, we consider that classes of
25 sites can be excluded if there is clear, and

1 particularly if there are undisputed, generic reasons
2 for their exclusion. An example that was cited in the
3 hearing was parkland. There may be others. However,
4 we do not intend to enquire at this hearing into the
5 question of whether a site that does not fit into such
6 a generic category or class should be removed from
7 further consideration.

8 On October 30th we held that the approval
9 of the rationale for the location of specific sites was
10 inconsistent with the scheme of the legislation. For
11 much the same reasons, the decision to exclude a
12 specific site is likewise inconsistent with that
13 scheme. Accordingly, we would not expect Ontario Hydro
14 to lead site-specific evidence of the merits of a
15 particular site.

16 As support for this approach, it should
17 be pointed out that if, after hearing extensive
18 argument, we were to refuse a request to exclude a
19 site, such a decision could very well be prejudicial to
20 a future site-specific hearing which would be called
21 for the reason of considering the location a
22 development at that site. Accordingly, we will not
23 accept evidence from either the Proponent or an
24 intervenor directed to advocating the inclusion or
25 exclusion of a particular site.

1 This brings me to the second question,
2 ② which is the request by Hydro for a definition of the
3 approvals sought. It has set out the approvals that it
4 is requesting in Exhibit 360.

5 We have already made clear that we would
6 endeavor to provide the requirement and rationale for a
7 specified range of hydraulic capacity and energy, and
8 we can see no objection to the wording of the proposed
9 approvals, provided of course that the sites referred
10 to fall within the range that we have specified.

11 That wording will, of course, have
12 implications for those sites, but beyond that we do not
13 see that anything we now say should hinder the process
14 that is now underway, independent of this hearing, with
15 respect to those sites.

16 We are not to be taken as precluding the
17 possibility that our decision, when made, will have
18 implications that extend beyond those three named
19 sites. The assessment of the environmental effects of
20 hydraulic potential and the need for the use of such
21 potential, we hope, would be of assistance to future
22 site specific panels.

23 Beyond that, we do not think it necessary
24 ③ or desirable for the purpose of proceeding with Panel 6
25 to say more about the jurisdiction or scope of the site

1 specific panels or the question of whether or not
2 proper notice has been given at this hearing.

3 Now, that completes what we have to say
4 at this time. We are prepared to accept comments by
5 way of request for clarification; we are not prepared
6 to revisit arguments about the merits or demerits of
7 the position that we have taken.

8 Just so I don't forget, because I have
9 been asked to put in a couple of business
10 announcements - this has nothing to do with what I have
11 just said - statements of concern for witness Panel 7
12 will not now be due until December 3rd, the scoping
13 scheduled for December 16th. We will begin to hear the
14 evidence of that witness panel immediately after the
15 scoping session, if the examination of witness Panel 6
16 has then been completed.

17 Now, another matter. I believe, Ms.
18 Kleer, you have something independent too that you want
19 to--

20 MS. KLEER: Yes, I do.

21 THE CHAIRMAN: --put into the record.
22 Would this be a good time for you to do that?

23 MS. KLEER: Certainly.

24 I was asked by Ms. Morrison to read into
25 the record a letter that was sent to the Board dated

1 November 1st. It was addressed to Justice Saunders,
2 Chairman of the Environmental Assessment Panel. I will
3 just read the text of the letter, it's quite short.

4 "Dear Mr. Saunders:

5 On behalf of Grand Council Treaty No. 3,
6 I would like to bring your attention to
7 statements made by Mr. Bruce Campbell,
8 legal counsel for Ontario Hydro, during
9 the Demand/Supply Plan hearings on
10 September 24, 1991.

11 "I refer specifically to the
12 transcript of the above-noted date on the
13 bottom of page 11185 and the top of page
14 11186, and I quote the transcript as
15 follows:

16 'Project studies, such as those being
17 conducted with transmission from
18 Manitoba, are already proceeding with the
19 involvement of aboriginal groups
20 affected.'

21 "From the perspective of the
22 Grand Council Treaty 3, Mr. Campbell's
23 statement is misleading the Environmental
24 Assessment Panel by suggesting we are
25 somehow supporting Ontario Hydro in

1 completing project studies for the
2 Ontario/Manitoba interconnection project.

3 "I must state to you and to the panel,
4 no agreements have been signed, nor have
5 verbal agreements been made by the Grand
6 Council to participate in supporting
7 Ontario Hydro's position for the need to
8 construct transmission lines in the
9 Ontario/Manitoba interconnection project.

10 "At this point in time we agree only
11 to a consultation process with Ontario
12 Hydro to look at environmental impact
13 studies in Treaty No. 3 territory. The
14 Grand Council Treaty No. 3 has not
15 consented, under any circumstances, to
16 support Ontario Hydro's position in the
17 Demand/Supply Plan hearings.

18 "In our role as intervenors in the
19 Demand/Supply Plan hearings, we are
20 requesting that you read this letter into
21 the record of proceedings, clearly
22 indicating the position of the Grand
23 Council Treaty No. 3 with respect to
24 statements by Mr. Campbell.

25 Meegwetch. Yours truly, Steve Fobister,

1 Grand Chief."

2 And there are several c.c.'s.

3 THE CHAIRMAN: Thank you, Ms. Kleer.

4 MS. KLEER: I suggest that this might be
5 made exhibit.

6 THE CHAIRMAN: Perhaps it should be made
7 an exhibit. Could we have a number for that exhibit?

8 THE REGISTRAR: That will be No. 361, Mr.
9 Chairman.

10 ---EXHIBIT NO. 361: Letter dated November 1, 1991
11 from Steve Fobister, Grand
12 Chief, Grand Council Treaty No. 3
13 to Justice Saunders, Chairman of
the Environmental Assessment
Panel.

14 THE CHAIRMAN: Have you not seen it, Mr.
15 Campbell?

16 MR. B. CAMPBELL: Never seen it, Mr.
17 Chairman. I would like to say something at this point,
18 though, so it appears concurrently in the transcript.

19 THE CHAIRMAN: All right, that will be
20 fine.

21 MR. B. CAMPBELL: Mr. Chairman, I haven't
22 seen the letter before, so this comes as a complete
23 surprise to me.

24 I want to be clear that there was no
25 suggestion in anything I said of any support for

1 Hydro's position. That is not the basis on which I
2 made my submissions; nor can that, in my submission, be
3 fairly concluded from anything I said on the record.
4 I'm fully aware and was fully briefed before making
5 those remarks as to the status of the discussions with
6 the aboriginal groups affected on the Manitoba project,
7 and there is no implication that, at end of the day,
8 there is some predetermined support being provided.

9 I understand fully that that is not the
10 case and nor, in my submission, did I suggest it to the
11 Board.

12 THE CHAIRMAN: Thank you, Mr. Campbell.

13 Now, I suggest perhaps that we adjourn
14 until two o'clock to give time for the parties to
15 consider what has been said. Is that an agreeable
16 process?

17 MR. B. CAMPBELL: It is, Mr. Chairman.
18 With the Board's indulgence, I will not be returning
19 for dealing with the details of the scoping.

20 There is one matter that has been raised
21 in our letter that I'm not quite sure how to deal with.
22 I don't propose to make any submissions, but if the
23 Board could convey, through its staff, any thoughts it
24 might have on the matter, we would appreciate it.

25 [12:40 p.m.]

1 There was a great deal of funding
2 provided on the basis of approvals being granted -- or
3 being requested, rather, for named sites, and I think
4 we would like some guidance from the Board as to how to
5 deal with that. Some of that funding would have been
6 for case preparation which has yet to occur, and I am
7 just not exactly sure of the mechanism of how we deal
8 with that issue. It was always clear in the funding
9 decision that they were not determining issues. They
10 granted funding on a certain basis and that basis has
11 now changed.

12 As I made clear in the letter, Ontario
13 Hydro is not requesting any - and I make it clear now
14 because I have been asked the question several times -
15 ontario Hydro is not requesting any money back on those
16 matters, but it does seem logical that work that was
17 argued before the funding panel was required to deal
18 with very site-specific matters, because of the nature
19 of the approvals, should be looked at. These are,
20 after all, public funds and there are some
21 responsibilities here I think that we all bear.

22 I think that as a first instance, I just
23 wanted to raise the matter. It would certainly be
24 helpful if the various parties who received funding of
25 that type could, as a first step, outline to the Board

1 and to ourselves, I guess, what of the funding fell
2 into that category and where we are in that process.

3 We don't want to be either difficult or
4 disruptive in dealing with this, but there are
5 significant funds involved and we do feel we have a
6 responsibility to raise the matter.

7 THE CHAIRMAN: I think that it is a
8 matter that perhaps should be raised. It's not one
9 that I want to deal with in a very hasty way.

10 I just have two initial thoughts. I
11 haven't really thought about this, but it seems to me
12 that anything that a party did prior to the October
13 30th decision, which was consistent with the funding
14 application, could not now be questioned. And my
15 second question would be that I would expect that most
16 of the preparation would be the same, the October 30th
17 decision would not have affected very much the
18 preparation or even, indeed, the evidence that will be
19 presented.

20 MR. B. CAMPBELL: Mr. Chairman, on the
21 first, we take no issue with that. We are not
22 suggesting there be any look backwards, in any event.

23 On the second one I think perhaps we can
24 take a slightly different view, having participated in
25 the funding hearing and sat through arguments, that it

1 was precisely because the sites were named that various
2 funds were required.

3 We have been beaten around the ears in
4 one direction and now beaten around the ears in the
5 other direction on this one. Quite frankly, if those
6 arguments that were presented, as I took them to be
7 presented in good faith, then the proposition you put
8 forward cannot be right, and I am assuming they were
9 put forward in good faith.

10 MS. KLEER: May I address this issue?

11 THE CHAIRMAN: Certainly, Ms. Kleer. I
12 think this is an issue we shouldn't just deal with in a
13 few minutes, that is what I am trying to get at.

14 MS. KLEER: I am not sure that this Board
15 has the jurisdiction to deal with this matter.

16 I think the Intervenor Funding Project
17 Act, Section 13(1) says:

18 An appeal lies only on a matter of law
19 with respect to a decision on intervenor
20 funding.

21 And that appeal goes on in Section 13(2)
22 to say that the appeal is by way of application to the
23 High Court and shall be heard by a single judge, et
24 cetera, et cetera. In our submission, this is a matter
25 to be dealt with by way of appeal to the High Court.

1 As well, there is one other way, I
2 suspect, that Ontario Hydro could deal with this, which
3 would be before a supplementary funding hearing to
4 review how we have used our funding in light of your
5 October 30th ruling. I don't want to get into the
6 merits of it now.

7 I think that we are using our funding in
8 light of your ruling and we are certainly going to make
9 that clear to our consultants. I don't want to get
10 into that right now, but I submit that this is not the
11 proper place to deal with it before this Board.

12 THE CHAIRMAN: Well, my understanding is
13 the only jurisdiction we have is to deal with
14 supplementary funding as a panel. I wasn't suggesting
15 that we get into it. Perhaps I shouldn't have said
16 anything.

17 I was trying to direct the idea that the
18 parties should perhaps try and work this out without
19 the assistance of the Panel, if they can, or at least
20 get it down to some kind of a point where somebody can
21 deal with it.

22 MS. KLEER: I take your suggestion.

23 I think that we are in Panel 6
24 cross-examination right now, I think it is going to be
25 extremely difficult for us to deal with it right up

1 front, right now and, in fact, it would prejudice our
2 preparation if we have to spend our time working on
3 funding matters. So, that's all I will say about that.

4 MR. MORAN: Mr. Chairman, on the matter
5 that I have touched upon just before the adjournment,
6 we have talked about the lengthy list of issues that
7 were included in the scoping package, and I believe
8 there is consensus now that we the shouldn't work our
9 way through that list at this point. A task like that
10 is largely going to be an abstract one and not very
11 helpful in the absence of evidence. And I think
12 everybody has agreed that we simply address those
13 issues if and when they do arise when parties are
14 cross-examining or presenting their evidence rather
15 than to work our way completely through that list.

16 MS. HARVIE: Well, if there was a
17 consensus I wasn't advised of that. I was prepared to
18 make some very brief submissions, having spoken to some
19 of the parties in the room, and if you prefer that I do
20 that after lunch, I am happy to do so then.

21 THE CHAIRMAN: I think we have done quite
22 a bit this morning and I think it might be good for
23 everybody to have a break and if we could come back at
24 two o'clock, we might be able to address them a little
25 bit better than we would now. So can we do that?

1 Would that be satisfactory?

2 MS. HARVIE: Yes.

3 THE CHAIRMAN: I am advised we are
4 changing two o'clock to 2:15.

5 THE REGISTRAR: This hearing will adjourn
6 until 2:15.

7 ---Luncheon recess at 12:50 p.m.

8 ---On resuming at 2:43 p.m.

9 THE REGISTRAR: Please come to order.
10 This hearing is again in session. Please be seated.

11 THE CHAIRMAN: Before we go on to the
12 scoping problems, are there any comments anyone wishes
13 to make about the reasons for decision that were given
14 this morning?

15 All right, we will then proceed then to
16 the scoping matter.

17 Mr. Moran, you I think led off that and
18 said something to the effect that the intervenors were
19 prepared to await the end of the Hydro evidence and
20 deal with any problems that came up in the course of
21 evidence, which is basically what we have done with the
22 previous five panels.

23 MR. MORAN: Yes. I think all I was
24 suggesting is that the intervenors were proposing that
25 if there is an issue relating to particular evidence or

1 particular questions on cross-examination, if it raised
2 an issue of level of detail or the question of
3 site-specific versus plan level considerations, all we
4 are proposing is that we simply deal with it when it
5 arises, if it arises; it may not. Otherwise, I think
6 we are going to get into a very abstract debate about
7 this list of things that Hydro has put and labelled as
8 site-specific issues.

9 I believe Ms. Harvie is agreeable to that
10 approach. She may have more to say anyway.

11 THE CHAIRMAN: Ms. Harvie, is that
12 correct?

13 MS. HARVIE: Yes, that's correct Mr.
14 Chairman.

15 THE CHAIRMAN: So dare I say that we are
16 now ready to start the evidence on Panel 6?

17 MS. HARVIE: There were some matters that
18 parties did ask me to speak to, and I don't know if
19 they still think that it is necessary, with respect to
20 their statement of proposed issues, items that we
21 rephrased or moved forward and backwards, and some we
22 were able to reach a number of resolutions,
23 particularly with respect to items that were in the
24 category 3 and category 4 which is the site-specific
25 category and those bumped to further panels.

1 I have spoken with parties who wished to
2 speak with me individually and we have reached an
3 agreement. I am not sure that it is necessary that we
4 bring that to your attention.

5 THE CHAIRMAN: If it's not necessary to
6 put it on the record at this time, then we perhaps
7 should not take the time to do it, if that's agreeable.

8 MS. HARVIE: Yes.

9 THE CHAIRMAN: So having heard no comment
10 to the contrary, we will adjourn now until Monday, the
11 18th of November when we will start the evidence on
12 Panel 6.

13 Thank you very much.

14 THE REGISTRAR: This hearing will adjourn
15 until Monday, November 18th.

16 ---Whereupon the hearing was adjourned at 2:45 p.m. to
17 be resumed on Monday, the 18th day of November,
18 1991.



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